

Conflicts of Interest and Ethics Training

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Conflict of Interest Law

- A.R.S. §§ 38-501, *et seq.*
- Applicability
- Involvement with IRC decisions
 - concepts of substantial and remote interests
- Prohibited acts
- Remedies and penalties

Conflict of Interest Law: Applicability

- Applies to:
 - All Public Officers (Commission Members)
 - All Public Employees
 - Government Contractors (when providing services to a government agency)

Conflict of Interest Law: Involvement in Decisions

A public officer who has, or whose relative has, a **substantial interest** in a decision of the public agency or in any contract, sale, purchase or service to such public agency **must disclose** that interest in the official record and **not vote on or participate in the decision or transaction.**

Conflict of Interest

- Inability to fairly perform duties to the IRC
- Real, potential, or merely appearance
- IRC commissioner, staff, and contractors must act in the IRC's interests
- Be careful of your financial investments, serving on an outside board, working on or discussing IRC friends or former government officials

Conflict of Interest Law: Substantial Interests

- Substantial Interest: “any pecuniary or proprietary interest, either direct or indirect, other than a remote interest” A.R.S. § 38-502.11
- Generally, any interest that affects your financial (pecuniary) or property (proprietary) interests (or causes other unfair advantages to you or those closest to you)

Conflict of Interest Law: Identifying Conflicts

- Will your decision have a positive or negative impact on your interests or that of your relatives?
- Do you have a monetary or ownership interest in the matter?
- Is your interest other than one of the designated “remotes interests”?

Conflict of Interest Law: What To Do

– What if you have a “substantial conflict”?

- Make the conflict of interest known in the official record
- Refrain from voting on or participating in the decision
- If in executive session, leave the table or the room

Conflict of Interest Law: Remote Interests

- “Remote interests” = financial and property interests deemed to be so minor as not to trigger the reporting and non-participation requirements
- May still vote and participate in discussions
- May still want to disclose or seek counsel

Conflict of Interest Law: Remote Interests - Examples

- Non-compensated officer of a non-profit corporation
- Landlord or tenant of contracting party
- Attorney whose client is contracting party
- Member of a non-profit marketing association
- Owner of less than 3% of the shares of a corporation, unless the income from this ownership exceeds 5% of the commissioner's income

Conflict of Interest Law: Remote Interests – Examples, Cont.

- Reimbursement for actual and necessary expenses in performance of official duties
- Receipt of municipal services under same terms and conditions as general public
- Officer/employee of another public agency, unless a direct economic benefit or detriment to officer/employee or relative involved
- Member of a group/class of at least 10 with an interest no greater than that of another

Conflict of Interest - Consequences

- Contracts are voidable
- Affected person may sue
- Court may assess attorneys' fees and costs

Conflict of Interest - Penalties

- Felony
 - A knowing or intentional violation of the Conflict-of-Interest and Ethics Laws
- Misdemeanor
 - A negligent or reckless violation of the Conflict-of-Interest or Ethics Laws
- Forfeiture of Office
 - A.R.S. §§ 35-211, et seq. (recovery statute)

Additional Ethics Considerations

Ethical Treatment of Colleagues

- Develop environment that respects work-life balance, encourages diversity, and promotes collaboration
- Highest priority on employees' mental and physical health and safety

Ethics

- **Gifts and Bribes:** Never use official position to secure, and never accept, any valuable thing or benefit that would not ordinarily accrue in the performance of official duties.

- A State employee must **NEVER** accept a bribe of any kind. A bribe is when somebody, **with corrupt intent**, offers or implies some sort of benefit in an attempt to influence an outcome. Sometimes a gift may appear harmless, but it is **best to be cautious when offered anything that can be seen as a benefit**. Both the person offering the benefit and the person receiving can be prosecuted if it is deemed bribery. See [A.R.S. § 13-2602](#) for a legal definition of “bribery.”

- **Additional Income:** A public officer or employee may not receive any additional compensation.

Prohibited Gifts to and Expenditures to State Officers and Employees

- No one may “make a gift to or an expenditure on behalf of a member or employee of the legislature through another person or organization for the purpose of disguising the identity of the person making the gift or expenditure.” A.R.S. § 41-1232.03(I).
- General prohibition against gifts from lobbyists includes food. A.R.S. § 41-1232.08.
 - Exceptions: food or beverages if properly reported; if related to an event or function when all legislators or an entire committee is invited; if given to the general public at an event. A.R.S. § 41-1231.

Prohibited Gifts to and Expenditures to State Officers and Employees (continued)

- Public bodies, principals, lobbyists, and public lobbyists are limited in gift-giving to \$10 during any calendar year per public person or body.
- Gifts cannot be designed to influence the public official's or public employee's official conduct.
- This includes an entertainment ban. A.R.S. § 41-1232.08.
- The lobbying law has both criminal and civil penalties. A.R.S. §§ 41-1237 to -1237.01.

Anti-Bribery: Fighting Corruption

- Categories broadly defined
- Bribery
- Foreign Corrupt Practices Act
 - Foreign government officials
- U.S. Travel Act
- State and local laws against bribing officials or private individuals
- Federal Joint Ethics Regulations
- Government Contract Clauses

Business Entertainment

- Common area for bribery charges
 - In the course of your official duties, the ADOA training suggests that you can only give or receive reasonable gifts \$10 or less.
 - Applicability of lobbying regulations.
 - NEVER to government officials without approval.

Ethical Treatment of IRC Resources

- Efficient use of IRC assets for governmental activities
- Diligent maintenance and protection of confidential business data and intellectual property
- Timely and accurate disclosure of information

Protecting IRC Property

- All commissioners, staff, and contractors are responsible for safeguarding against theft, loss, or misuse of IRC property
 - Physical assets (buildings, computers, office supplies)
 - Proprietary information and IP
 - Government credit cards
 - Any property leased or loaned to IRC by other agencies or businesses

Access to Data: Confidential Information

- Ethical and legal duty to not disclose confidential information. A.R.S. § 38-531.
 - During the course of employment and for two years thereafter, public officers and employees are prohibited from disclosing or using, without appropriate authorization, any information acquired in the course of their official duties designated as confidential or information made confidential by statute or rule. A.R.S. § 38-504(B).
- Protect confidential information in your possession from unauthorized persons.
- Exceptions: Violation of the law or gross mismanagement. A.R.S. § 38-532 (whistleblowers)
 - Very specific criteria
- Discuss with IRC Legal Counsel if information is confidential or a public record.

Protecting IRC Records

- All records and reports (internal and to external sources) must be honest, accurate, and not misleading
- Follow the Arizona Public Records requirements
 - Do not remove or personally keep IRC records

Public Perceptions

- Add additional filters to your decision-making process
- Is there sufficient appearance of a connection that your continued participation would harm your credibility or that of the IRC (or the third-party organization involved)?
- Is the accusation reasonably grounded?
- Does the accuser stand to gain something by your withdrawal from the discussion?

Ethics in Communications

- Golden Rule – “What would your Mom, Judge, or Legislator say about that email/tweet/snapchat?”
- Boeing 2020 regarding 737:
 - “Would you put your family on a MAX simulated trained aircraft? I wouldn't.”
 - “This airplane is designed by clowns who in turn are supervised by monkeys...”
 - “I don't know how to fix these things ... it's systemic. It's culture. It's the fact we have a senior leadership team that understand very little about the business and yet are driving us to certain objectives.”
- FBI Agent Trump Text messages:
 - “I want to believe the path you threw out for consideration in Andy's office” – the text reads, referring to then-FBI Deputy Director Andrew McCabe – “that there's no way he gets elected,” – referring to Trump – “But I'm afraid we can't take that risk. It's like an insurance policy in the unlikely event you die before you're 40...”
- Agent's Response to Questioning at Congressional Hearing:
 - "have created confusion and caused pain for people I love" and "have provided ammunition for misguided attacks against the FBI, an institution I love deeply and have served proudly for more than 20 years."

Seeking Guidance

- Attend mandatory orientation training (ADOA). A.R.S. § 38-592.
- Review interpretative guidance from the Attorney General and the Legislature.
- Seek guidance from IRC Legal Counsel.
- Seek guidance from individual counsel.

Other Considerations

- Fair dealing
 - Deal fairly and in good faith with IRC, its partners, employees, and contractors.
 - No manipulation, concealment, misrepresentation, etc.

Other Considerations

- Political process
 - No political expenditure or lobbying
 - IRC (as a body) cannot engage in partisan political activity
 - Registration as a lobbyist?
 - Individual political action is ok, but not with IRC resources, funds, or time

Resources

- A.R.S. §§ 38-501, *et seq.*
- Arizona Attorney General Handbook, Ch. 8
- Arizona Senate Rules (Code of Conduct)
- Arizona House Rules (Code of Conduct)
- Arizona Lobbying Handbook

Note: Special thanks to the City of Prescott, whose training material was utilized in preparation of this presentation.

Questions?

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